Filed 12/8/15 Corey C. v. Superior Court CA5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIFTH APPELLATE DISTRICT**

COREY C.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF SOCIAL SERVICES,

Real Party in Interest.

F072251

(Super. Ct. Nos. 14CEJ300232-1, 14CEJ300232-2, 14CEJ300232-3)

# OPINION

**THE COURT**[*]

ORIGINAL PROCEEDING; petition for extraordinary writ review. Kimberly Nystrom-Geist, Judge.

Cheryl K. Turner, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and Brent C. Woodward, Deputy County Counsel, for Real Party in Interest.

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[*] Before Levy, Acting P.J., Gomes, J. and Detjen, J.

Corey C. (father) seeks extraordinary writ review of the juvenile court's orders issued at a contested six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e)),[1] terminating his reunification services and setting a section 366.26 hearing as to his three-year-old son Corey C., Jr. (hereafter "Corey") and one-year-old twin son and daughter ("the twins"). He contends the juvenile court erred in finding that he was provided reasonable reunification services and that there was not a substantial probability the children could be returned to his custody. We deny the petition.

## PROCEDURAL AND FACTUAL SUMMARY

Dependency proceedings were initiated in July 2014, when Alexandra, father's girlfriend and the mother of his children, disclosed to her social worker that she was afraid to return to her apartment and showed the social worker her bruised biceps, which she said father inflicted. She also said father threw her in a dumpster the year before following a domestic violence altercation. Father was arrested.

The Fresno County Department of Social Services (department) took then two-year-old Corey and the one-month-old twins into protective custody because Alexandra was not capable of caring for them. She is developmentally delayed and father was her primary caregiver. The children were all born prematurely and were developmentally delayed. Corey was ultimately placed with his maternal grandmother and the twins were placed together in a foster home.

In November 2014, the juvenile court exercised its dependency jurisdiction over the children and ordered father and Alexandra to complete a parenting program, a risk assessment and a domestic violence assessment. The court also ordered supervised weekly visitation and granted the department discretion to advance to extended visits. The court set the six-month review hearing for July 2015.

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[1] Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

Over the next eight months, father regularly participated in his court-ordered services. He completed a parenting program and a 12-week anger management course as a condition of probation. He also enrolled in a 52-week Batterer's Treatment Program and completed a risk assessment conducted by Dr. Tamika London. However, Dr. London's findings were not favorable.

Dr. London concluded that father posed a substantial risk to the children and that reunification services were not likely to reduce or eliminate it. She based her opinion on his denial that he assaulted Alexandra and the lack of insight into the adverse impact it had on Alexandra and the children, his repeated assertion that he did not need services and his pattern of medically neglecting the children. Dr. London also assessed Alexandra and concluded that she did not have the intellectual ability to adequately care for the children on her own and that father was too emotionally abusive to be of any assistance to her.

Dr. Timothy Cox, a therapeutic visitation therapist, also held out no hope for reunifying the family. In February 2015, he and another therapist began supervising father and Alexandra's visits because of the department's concern about the children's safety. Dr. Cox characterized the quality of the visits as "horrible" and, in March 2015, after observing only five visits, advised the department "that permanency planning, sooner rather than later, would be in the best interest of the children."

In its report for the six-month review hearing, the department recommended the juvenile court terminate father's and Alexandra's reunification services and set a section 366.26 hearing. The department reported that they regularly visited the children but made minimal progress in resolving the problems that led to the children's removal. Father continued to agitate Alexandra to the point that she had to be removed from the situation to calm her down and he continued to deny that they needed services. The department further opined that father had the capacity to complete his services but not provide for the children's safety or special needs as demonstrated during the therapeutic

visits. The department opined that Alexandra did not have the ability to complete her services or safely parent the children. The department further reported that the children's care providers were interested in adopting them.

On September 1, 2015, the juvenile court conducted a contested six-month review hearing and adopted the department's recommendations. In ruling, the juvenile court gave a lengthy summary of the evidence on which it based its findings. In the end, the court found that the department provided father and Alexandra reasonable reunification services and ordered them terminated. The court also found there was not a substantial probability that the children could be returned to parental custody by the 12-month review hearing, which the parties agreed would fall on September 16, 2015. The court set a section 366.26 hearing to select a permanent plan.

This petition ensued.

**DISCUSSION**

If a child is not returned to parental custody at the six-month review hearing and is under the age of three years, the juvenile court may set a section 366.26 hearing if it finds by clear and convincing evidence the parent failed to participate regularly and make substantial progress in a court-ordered treatment plan. (§ 366.21, subd. (e).) If, however, the court finds there is a substantial probability the child may be returned to his or her parent within six months or that reasonable services have not been provided, the court is required to continue the case to the 12-month review hearing. (*Ibid*.)

Father does not challenge the juvenile court's finding that he failed to participate regularly and make substantive progress in his court-ordered treatment plan. (§ 366.21, subd. (e).) Rather, he focuses on the court's obligation to continue reunification services if it finds reasonable services were not provided or there is a substantial probability the children could be returned to his custody.

We review the juvenile court's order terminating reunification services to determine if it is supported by substantial evidence. In so doing, "we review the record in

the light most favorable to the court's determinations and draw all reasonable inferences from the evidence to support the findings and orders. [Citation.] 'We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.'" (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689 (*Kevin R.*).)

We conclude substantial evidence supports the juvenile court's reasonable services and substantial probability of return findings as we now explain.

***Reasonableness of Reunification Services***

Father contends he was not provided reasonable reunification services because the social worker did not individualize his visits with the children by "increasing" them and did not ensure he complete the risk assessment sooner.

The department is required to make a good faith effort to promote reunification by assisting the parent in complying with the court-ordered services plan. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Whether the department did so factors into the juvenile court's determination as to whether the parent was provided reasonable services. By statute, the juvenile court may *not* terminate a parent's reunification services at the six-month review hearing if it finds that "reasonable services have not been provided" to the parent. (§ 366.21, subd. (e).)

With respect to visitation, father does not explain how the department should have "increased" his visitation. Presumably, he means it should have arranged additional supervised visits for him without Alexandra present. Assuming that is the case, Dr. Cox testified that they considered but rejected that option because father and Alexandra had no intention of separating. Therefore, there was no need to assess father's individual ability to safely manage the children. Further, Dr. Cox was able to individually assess father even with Alexandra present and regularly observed him to be distracted to the point of endangering the children. Dr. Cox testified, describing an instance just two weeks prior to the hearing when father was attending to the twins who were on the floor

and Alexandra was over on one side of the room. One of the twins was trying to climb up on the furniture and the other was crawling near father. Father was focused on the one crawling on the furniture, telling him he could not climb up there. At the same time father said to Dr. Cox, "'Look what I am as a parent, and I'm trying to enforce this with him and he shouldn't be on the furniture.'" Father did not notice however that the other twin had crawled under his buttocks and that he was about to sit on her head. Dr. Cox was able to pull her out of the way. He said that such instances had occurred throughout father's visitation with the children in one form or another.

Given father and Alexandra's plan to remain a couple and the safety risk they both posed to the children, it was reasonable for the social worker to maintain joint supervised visitation.

With respect to the risk assessment, the record reflects that the juvenile court ordered the assessment in November 2014 and that it was conducted in March 2015. Other than that, there is no other reference to the timing of the assessment. Father contends that that four-month lapse is unreasonable but does not cite any supporting evidence or otherwise develop the argument. We therefore conclude he abandoned it. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1117 ["failure of appellant to advance any pertinent or intelligible argument … constitute(s) an abandonment of the (claim of error)"].)

We further conclude that father forfeited his right to challenge the content of Dr. London's report of the risk assessment or the information on which she relied. Dr. London's assessment was attached to the department's report for the six-month review hearing, which was entered into evidence without objection. Having failed to object to the admissibility of the assessment, father forfeited any challenge to its validity on appeal. (Evid. Code, § 353, subd. (a).)

***Substantial Probability of Return***

Father contends there was sufficient evidence to support a finding there was a substantial probability the children could be returned to his custody by the "12/18" month review hearing.

As a preliminary matter, we do not review the evidence to determine whether it supports a contrary finding. Instead, we review the evidence to determine whether substantial evidence supports the finding that the juvenile court *actually* made. (*Kevin R., supra,* 191 Cal.App.4th at pp. 688-689.)

Further, section 366.21, subdivision (e), the statute governing the six-month review hearing, does not authorize the juvenile court to extend services beyond the 12-month review hearing even where, as here, the six-month review hearing is conducted only a few weeks before the date on which the 12-month review hearing would fall. (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 846-848.) Therefore, the question on this petition is whether there was a substantial probability the children could be returned to father's custody in the 15 days remaining until September 16, 2015. We conclude there was not.

In assessing the probability of return, the court may consider any relevant evidence, including whether a parent has consistently and regularly contacted and visited the minor, whether the parent has made significant progress in resolving the problems that led to the minor's removal, and whether the parent has demonstrated the capacity and ability to complete the objectives of his or her case plan and to provide for the minor's safety, protection, physical and emotional well-being, and special needs. (*M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 181.)

Here, the juvenile court concluded that father was able to complete his reunification services but was not able to safely parent the children and meet their special needs. The court was particularly concerned about the domestic violence between father and Alexandra and father's failure to address and take responsibility for it. The court was

also concerned about the disparity in their intellectual abilities and Alexandra's inability to protect herself and the children from abuse. The court did not believe that father could alleviate its concerns in the remaining 15 days before the 12-month review hearing and we concur.

We affirm the juvenile court's orders terminating father's reunification services and setting a section 366.26 hearing and deny the petition.

**DISPOSITION**

The petition for extraordinary writ is denied. This petition is final forthwith as to this court.